

State of Colorado



Bill Owens
Governor

Stacy L. Worthington
Board Director

DPA

Department of Personnel
& Administration

State Personnel Board
The Chancery
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AGENDA PUBLIC BOARD MEETING October 21, 2003

A public meeting of the State Personnel Board will be held on Tuesday, October 21, 2003, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-764-1472 by October 16, 2003.

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RULEMAKING

The Notice of Proposed Rulemaking was issued on August 15, 2003, and published in the Colorado Register on September 10, 2003. The proposed rules and the proposed statement of basis and purpose have been available for review at the Board office and on the state website since September 22, 2003. Testimony to be considered for rulemaking is open.

State Personnel Board Rule R-1-17(B) is being amended to correct an error in wording in the official publication of the rules. Board Rules R-7-21; R-7-22; R-7-23; and R-7-24 (Separation Incentives) are being repealed to comply with statute.

I. REQUESTS FOR RESIDENCY WAIVERS

A. October 1, 2003 Report on Residency Waivers

Reports are informational only; no action is required.

II. PENDING MATTERS

There are no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

A. Kevin Harvey v. Department of Human Services, Division of Youth Corrections, Mount View Youth Service Center, State Personnel Board case number 2002G129.

On May 21, 2003, the Initial Decision and Order Denying Respondent's Request for Attorney Fees was issued. Harvey's Opening Brief was filed on September 3, 2003. Respondent filed Respondent's Response Brief on September 26, 2003. Harvey's Reply Brief was filed on October 9, 2003.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Leona M. Olquin v. Department of Transportation, Materials and Geotechnical Branch, State Personnel Board case number 2003G100.

Complainant petitions the State Personnel Board to grant a discretionary, evidentiary hearing to review Respondent's termination of Complainant's probationary employment. On September 24, 2003, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be denied.

- B. Kevin Harvey v. Department of Human Services, Division of Youth Corrections, Mount View Youth Service Center, State Personnel Board case number 2003G111.

Complainant petitions the State Personnel Board to grant a discretionary, evidentiary hearing to review Respondent's adverse final grievance decision. On September 24, 2003, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be denied.

- C. Gayle Marie Ross v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2003G122.

Complainant petitions the State Personnel Board to grant a discretionary, evidentiary hearing to review Respondent's adverse final grievance decision. On September 29, 2003, a Preliminary Recommendation of the Administrative Law Judge was issued, recommending that a hearing be denied.

- D. Ennio Daniel v. Department of Public Health and Environment, State Personnel Board case number 2002G065.

Complainant petitions the State Personnel Board to grant a discretionary, evidentiary hearing to review Respondent's adverse final grievance decision. On October 7, 2003, a Preliminary Recommendation of the Director was issued, recommending that a hearing be denied.

- E. Carol Roberson v. Regents of the University of Colorado, University of Colorado Health Sciences Center, State Personnel Board case number 2002G064.

Complainant petitions the State Personnel Board to grant a discretionary, evidentiary hearing to review Respondent's adverse final grievance decision. On October 9, 2003, a Preliminary Recommendation of the Director was issued, recommending that a hearing be denied.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Rhonda L. Eleneki v. Trustees of the State Colleges in Colorado, Metropolitan State College, State Personnel Board case number 2002B150.

On September 11, 2003, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's administrative discharge of Complainant was not

arbitrary, capricious or contrary to rule or law, and ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

- B. Jack Miller v. Department of Corrections, Fremont Correctional Facility, State Personnel Board case number 2002B077.

On September 19, 2003, the Order Granting Summary Judgment in Favor of Respondent and Dismissing Complainant's Appeal With Prejudice was issued. The ALJ found that Respondent's separation of Complainant from his employment for exhaustion of leave was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that DOC is entitled to judgment as a matter of law and Complainant's appeal is dismissed with prejudice.

- C. Tina Sterling v. Regents of the University of Colorado, University of Colorado at Denver, State Personnel Board case number 2003B085.

On September 29, 2003, the Order Regarding Respondent's Motion for Summary Judgment was issued. The ALJ found that Respondent had authority to rescind the layoff; Complainant failed to report to work so Respondent concluded that Complainant had resigned; and given Complainant's refusal to acknowledge the rescission of the layoff and her refusal to report to work on April 18, 2003, coupled with her counsel's request that Respondent "provide all legally required benefits, including COBRA information and pay for annual and sick leave for which [Complainant] is entitled," Respondent's conclusion was reasonable. The ALJ granted Respondent's motion for summary judgment and dismissed the matter with prejudice.

- D. Larry K. Lara v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2002B054.

On October 3, 2003, the Order Granting Summary Judgment; Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary termination of Complainant was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that DOC is entitled to judgment as a matter of law, Respondent's action is affirmed, and Complainant's appeal is dismissed with prejudice.

VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 16, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 16, 2003 PUBLIC MEETING:

- A. Anwar Hussein v. Regents of the University of Colorado, University of Colorado at Colorado Springs, State Personnel Board case number 2002B041.

The Board voted to deny Complainant's Exceptions to the Preliminary Recommendation of the Administrative Law Judge.

- B. Joseph Encinias v. Department of Transportation, State Personnel Board case number 2003B078.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

- C. Joyce Miller v. Department of Personnel, Division of Finance and Procurement, Office of State Controller, State Personnel Board case number 2003G010.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- D. Erica Glass v. Department of Human Services, Food Distribution Unit, State Personnel Board case number 2003G105.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Catherine Thurston v. Department of Revenue, Taxpayer Service, State Personnel Board case number 2003G097.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- F. Chris Lange v. Trustees of the State Colleges in Colorado, Mesa State College, State Personnel Board case number 2003G059.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

- G. Daniel W. Manning v. Department of Higher Education, Auraria Higher Education Center, Division of Facilities Management, State Personnel Board case number 2002B117.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Changes to the Whistleblower Statute
- Order Affirmed/Mandate; Brown v. Department of Higher Education, Regents of the University of Colorado, University of Colorado System, Procurement Service Center, State Personnel Board case number 2001B129, Court of Appeals No. 02CA1306
- Mandate in Mangione v. Department of Public Health and Environment, Disease Control Division, State Personnel Board case number 2002G124, Court of Appeals No. 03CA38
- Order Affirmed/Mandate in Tucker v. Department of Public Health and Environment, State Personnel Board case number 2002B001, Court of Appeals No. 02CA1721

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

A. Case Status Report

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NEXT REGULARLY SCHEDULED BOARD MEETINGS
9:00 a.m.

<u>Date</u>	<u>Location</u>
*November 18, 2003	Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
*December 16, 2003	Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246
January 20, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
February 17, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
March 16, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
April 20, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
May 18, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222
June 15, 2004	Colorado Department of Transportation 4201 East Arkansas Ave., Second Floor Auditorium Denver, CO 80222

* PLEASE NOTE LOCATION OF BOARD MEETINGS FOR NOVEMBER & DECEMBER 2003.